THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.22735 of 2006

DATED 24.11.2006

Between:

Mandugula Amaralingam and another. .... PETITIONERS

versus

The Commissioner, Bhongir Municipality, Bhongir, Nalgonda District and two others. .... RESPONDENTS

WRIT PETITION NO.22735 of 2006

ORDER:

This Court ordered Notice Before Admission on 1.11.2006. Heard Sri SMD Afzal Biyabani, learned counsel representing the writ petitioners and Sri Polisetty Radhakrishna, learned Standing Counsel representing the 1st respondent and Sri Purushottam, learned counsel representing respondents 2 and 3.

2. The Writ Petition is filed for a Writ of Mandamus declaring the proposed actions of respondent No.1 in demolition of house bearing No.1-3-136/3, situated at Station Road, Bhongir Town, Nalgonda District, as illegal, arbitrary, in violation of principles of natural justice and provisions of Constitution of India and consequently declare the notice UC No.A2/312/2006, dated 17.10.2006 as illegal, vague, unclear, null and void and set aside the same and pass such other suitable orders.

3. The first petitioner had sworn to the affidavit filed in support of the Writ Petition and it is stated that the first petitioner and second

petitioner are co-owners and possessors of the house bearing No.1-3-136/3, situated at Station Road, Bhongir Town, Nalgonda District, and the same had been constructed after obtaining permission from Bhongir Municipality. It is stated that the said construction was carried out according to the plan sanctioned by the Bhongir Municipality and there is no illegal or unauthorized construction. It is also stated that the 2nd respondent is the owner of S.V. Lodge. Respondents 2 and 3, only with an intention to harass the petitioners, filed false and frivolous suits O.S. Nos.346 and 347 of 2006 along with IA Nos.709 of 2006 and 711 of 2006 on 30.9.2006 on the file of Junior Civil Judge, Bhongir seeking mandatory injunction and it is pertinent to note that the 1st respondent was not made as party to the above suits for the reasons best known to the respondents 2 and 3. It is also stated that the petitioners filed Vakalat to defend the said suits, which are pending before the Junior Civil Judge, Bhongir. That being so, 1st respondent in collusion with respondents 2 and 3, high-handedly and without following due process of law, issued a notice U.C. No.A2/312/2006, dated 17.10.2006 under Section 228(3) of A.P. Municipalities Act demanding to remove the illegal structures within a period of 3 days, failing which demolition action will be initiated departmentally and action in terms of Section 34 of A.P. Municipalities Act, 1965 will be taken against the petitioners. It is also stated that no such provisional order dated 26.9.2006 had been served on the petitioners as stated in the notice dated 17.10.2006. It is also stated that the notice itself is misconceived and vague as the same do not specifically states as to the nature of illegal construction carried out by the petitioners and more so when no provisional order dated 26.9.2006 was served on them. It is further stated that the 1st respondent in collusion with 2nd and 3rd respondents had issued notice UC No.A2/312/2006, dated 17.10.2006 to the petitioners. It is stated that when the suits filed by 2nd and 3rd

respondents against the petitioners are pending before the Junior Civil Judge, Bhongir, action of 1st respondent in issuing the impugned notice UC No.A2/312/2006, dated 17.10.2006 is highly arbitrary and in violation of Municipalities Act and principles of natural justice. Several other factual details also had been narrated in this regard in paragraphs 5, 6 and 7 of the affidavit filed in support of the Writ Petition.

4. The 1st respondent filed counter affidavit averring in paragraph 3 that under the office proceedings No.312/C1/2005, dated 13.4.2005, building permission was accorded to the petitioners for construction of ground and first floors in place of dilapidated building bearing H.Nos.1-3-44, 1-3-44/C, 1-3-45, 1-3-45/A, 1-3-45/B, 1-3-46 and 1-3-52 at Vidyanagar, Bhongir. It is also stated that G.Venkat Reddy, G.Kalpana and V.Uma Devi, owners of D.Nos.1-3-232 and 1-3-23, had submitted an application dated 14.9.2006 to the Municipal Commissioner, Bhongir, wherein they had stated that their own house bearing No.1-3-232 is located at Main Road, Vinayak Chowrastha and behind the said house, there is a common way width 3' and there is a common way width 4 ½' behind the house bearing door No.1-3-23 and that the said pathway is being utilized from Junior College to Vidyanagar Main Road, and that the petitioners have unauthorisedly occupied this pathway for construction of house in door No.1-3-52 and requested to get the encroachment notified and stop the unauthorized construction. Thereafter, against the said encroachment and unauthorized construction, a provisional order notice in UC No.A2/312/2005, dated 26.9.2006 under Section 228(1) of A.P. Municipalities Act, 1965 was issued and the said notice was served on the 2nd petitioner on 27.9.2006 duly obtaining her acknowledgement, and as no reply was received to the said provisional order notice, a Confirmation Order notice under Section 228(3) of A.P. Municipalities Act, 1965 in UC

No.A2/312/2006, dated 17.10.2006 was issued to the petitioners, and the said confirmation order notice was served on the 2nd petitioner on 18.10.2006 duly obtaining her acknowledgement on the office copy bearing UC No.A2/312/2006, dated 17.10.2006. It is also stated that there is no response to the above two notices and they have not stopped the work and completed the construction and occupied the building. The petitioners had also encroached the pathway duly making construction in the encroached portion. It is also stated that no affidavits had been received which are said to have been filed by respondents 2 and 3 in OS Nos.346 of 2006 and 347 of 2006 along with IA Nos.709 of 2006 and 711 of 2006 on 30.9.2006 on the file of Junior Civil Judge, Bhongir, seeking mandatory injunction against the petitioners and the Commissioner was not made as respondent in the said suits as no information or affidavits were received by the Commissioner. It is specifically stated that the petitioners themselves stated that the 1st respondent was not made as party to the said suits. Further specific stand is taken that the stand taken by the writ petitioners that no provisional order had been served is totally incorrect inasmuch as the confirmation order notice was issued in UC No.A2/312/2006, dated 26.9.2006 and the same was served on the 2nd petitioner on 27.9.2006 duly obtaining her signature in the office copy of the said notice. It is also stated that having found that since the petitioner had encroached upon the pathway and completed the construction on the said pathway unauthorisedly, action was initiated and provisional order notice and confirmation order notice were issued after duly obtaining the signature of the 2nd petitioner on the office copies. Several other factual details had been narrated and further specific stand was taken that against the notices issued under Section 228 of A.P. Municipalities Act, 1965, an appeal lies to the Council within 30 days under Section 30 of A.P. Municipalities Act, 1965.

5. In the light of the facts and circumstances explained, it cannot be prima facie said that the action initiated in this regard is either unjust or improper. Be that as it may, inasmuch as it is stated that the petitioners are having an alternative remedy, they are at liberty to pursue such remedies available to them under law. Except making this observation, nothing else can be done.

6. With the above observation, the Writ Petition is closed. No costs.

24.11.2006

SSR